which was not in existence at the date of the act of bankruptcy, and as it is clear law that a petitioning creditor's debt must have accrued at the time of the act of bankruptcy, it followed that the adjudication in that case was bad in law and void *ab initio*. It is plain that where a Court is called upon to state whether in its opinion a debtor ought or ought not to have been adjudged bankrupt in circumstances such as existed in *In re Yap E. Boon*[3], *supra*, the Court, being rightly informed of the law, can have only one opinion and consequently there is no exercise of discretion in giving an opinion. This, in effect, is the substance of Cobbett J.'s observations at the end of his judgment in *In re Yap E. Boon*[3], *supra*, where he says: "This does not appear to me to give the Judge any discretion if in his opinion the debtor ought not to have been adjudicated. It merely enables him to annul the bankruptcy and if that is his opinion he really has no option. It is not therefore the exercise of a discretion that we are called upon to consider but whether his opinion is right".

In other words, where the adjudication is bad in law and therefore void *ab initio*, the question whether the Court should or should not exercise its discretion to annul the adjudication, logically does not arise since the adjudication is already, in law, a nullity. It is true that certain expressions in the judgment of Terrell J. are wide enough to cover adjudications which are not bad in law but as they were not necessary for the purpose of the decision in that case, they cannot be regarded as binding. In my opinion the decision in *In re Yap E. Boon*[3] *supra*, can be reconciled with the view expressed by the learned editor of *Williams* on Bankruptcy and the Master of the Rolls in *In re Harry Dunn*[2], *supra*, that the power of the Court to annul an adjudication under this section is discretionary if it is remembered that *In re Yap E. Boon*,[3], *supra*, the Court was dealing with an adjudication order which was bad in law and void *ab initio* and therefore not one which called for the exercise of any discretion by the Court when ordering it to be annulled.

Such being my view of the law, the next question to be considered is whether an adjudication order based upon a Sheriff's *nulla bona* return which subsequently turns out to be an incorrect return must be annulled because it is bad in law or whether it is a good adjudication *ab initio*, in which case the Court may, in the exercise of its discretion, decide not to annul it under section 104. It is clear from the case of *Gyfford v. Woodgate*[1], *supra*, that a Sheriff's return is *prima facie* evidence of the truth of the facts contained in it, "upon the ground" as Ellenborough C.J. said, "that faith is to be given to the official set of a public officer, like the Sheriff" and therefore, in my view this adjudication founded upon such a return was initially a good adjudication. I would add that in my opinion the petitioning creditor's position in this case was not very different from that of the debtor in *In re Harry Dunn*[2], *supra*, which was referred to by Denning L.J. (as he then was) at page 64 in the following terms: "Even if the debt was unenforceable, nevertheless if the debtor honestly believed on reasonable grounds 'that he was unable to pay his debts' the adjudication was good and should not be annulled *ab initio*". So also in this case, even if the Sheriff's return was incorrect, nevertheless if the petitioning creditor honestly believed on reasonable grounds, (that is to say, on the faith of the Sheriff's return), that the debtor had no property liable to seizure, the adjudication was initially good.

It follows, therefore, that the Court has a discretion as to whether it should annul the adjudication under section 104 of the Ordinance. On this point, there can, I think, be no doubt. A perusal of the affidavits and other documents in these bankruptcy proceedings clearly shows that the debtor has a long history of duplicity and equivocation. If he had taken steps to identify the specific goods to his creditors in February 1957 instead of waiting until August 1957 to identify them to the Official Assignee, or if he had so much as exhibited his car registration book to his affidavit in February instead of suppressing all knowledge of the existence of the car until six months later, these proceedings need never have started on their long and tortuous course. From the outset the conduct of the debtor has, to say the least, been conspicuous for its lack of candour, and in my opinion, there is no good reason why the Court should exercise its discretion in his favour and annul this bankruptcy. For these reasons, I am of the opinion that the application should be dismissed.

Application dismissed.

Solicitors: *de Souza & Christopher; Allen & Gledhill; Hilborne & Co.*

SHAW & SHAW LTD. v. LIM HOCK KIM

[A. C. J. (Whyatt C.J.) March 5, 1958]

[Singapore — District Court Appeal No. 24 of 1955]

Landlord and Tenant — Claim for possession — Building of a "temporary character" distinguished from that of "permanent character" — Matters to be considered — Evidence of qualified witnesses — Control of Rent Ordinance (Cap. 242), s. 15(1)(i).

In this case the appellants claimed for the recovery of possession of premises let by them to the respondent on a monthly tenancy which was determined by a Notice to quit. At the trial they contended that the premises consisted in whole or in part of buildings of a temporary character which they intended to demolish for the purpose of rebuilding on the site, the plans for which had been

approved by the local authorities. They also contended that the demolition was necessary in the interest of public health or town improvement.

The respondent claimed to be a statutory tenant and denied that the buildings referred to were of a temporary character.

The learned District Judge gave judgment for the defendant. On appeal, *inter alia*, the following grounds were urged: The learned District Judge (i) was wrong in holding that the buildings were not of a temporary character; (ii) failed to adopt any or any proper criterion in deciding whether or not the said buildings, or any of them, were of a temporary character; (iii) failed to consider judicially or to give due weight to the evidence of two well qualified witnesses, an architect and an engineer.

Held: in the circumstances of the case the decision of the learned District Judge was wrong and therefore the appellants were entitled to judgment.

The words "building of a temporary character" in para. (i) of subsection (1) of section 15 of the Control of Rent Ordinance are not words of precision. Whether a building can be described as of a temporary character or not is largely a matter of degree; it is a relative term and therefore incapable of precise definition. It is used in this context in contradistinction to buildings of a permanent character and although it may be difficult to state where the line is to be drawn between buildings of a "temporary character" and buildings of a "permanent character" because the distinction is one of degree, nevertheless there must be many cases which clearly fall on one side of the line or on the other. The sort of matters to be considered when deciding on which side of the line a particular case falls are the kind of materials which have been used and the method of construction employed, and in some cases, it might be necessary to consider the purpose for which the building is used. There may, in some cases, be other circumstances to be considered but it is clear that the question cannot depend upon a subjected standard, namely whether the individual who happens to be occupying the buildings intends to treat them as permanent, as opposed to temporary buildings.

Evidence of well-qualified witnesses (in this case an architect and an engineer) discussed.

Case referred to:—

(1) *Indo-Trading Co. Ltd. v. Ong Lim Chua* (1954) M.L.J. 155.

DISTRICT COURT APPEAL.

K. A. Seth for the appellants.

C. H. Smith for the respondent.

Whyatt C.J. : — This is an appeal from a decision of the learned District Judge in which he dismissed the claim of the plaintiff for the recovery of possession of certain premises at No. 340 Balestier Road. The plaintiffs claimed possession of these premises in order to erect upon them buildings of a permanent character. The learned District Judge dismissed the claim in a very brief judgment which appears to have been delivered several months after the hearing was concluded and which fails to deal with much of the evidence that had been placed before him by the plaintiffs.

As has been pointed out by counsel for the appellant, the cases in which the Courts have considered the meaning of the words "buildings of a temporary character", which occur in paragraph (1) of sub-section (1) of section 15 of the Control of Rent Ordinance, show that they are not words of precision. The former Chief Justice, in a decision dealing with this point in 1954[1]; expressed the view that whether a building can be described as of a temporary character or not is largely a matter of degree. I think, with respect, that is a correct statement so far as it goes. I would add that it is a relative term and since it is a relative term, it is incapable of precise definition. It is used in this context in contradistinction to buildings of a permanent character and although it may be difficult to state where the line is to be drawn between buildings of a "temporary character" and buildings of a "permanent character" because the distinction is one of degree, nevertheless there must be many cases which clearly fall on one side of the line or on the other. The sort of matters to be considered when deciding on which side of the line a particular case falls are the kind of materials which have been used and the method of construction employed, and in some cases, one might have to consider the purpose for which the building is used. There may, in some instances, be other circumstances to be considered but of one thing I am quite clear, that the question cannot depend, as counsel for the respondent contended, upon the intention of the individual who happens to be occupying the buildings. Such a test would introduce a subjective standard and a building which was of "a temporary character" when occupied by A might become a building of "a permanent character" when occupied by B. It is quite impossible, in my view, to give such a meaning to the words "buildings of a temporary character" in paragraph (i) of sub-section (1) of section 15 of this Ordinance.

Now in the present case there is the evidence of well-qualified witnesses, an architect and an engineer, and when, deciding the question whether these buildings are of a temporary character or not, it is necessary to consider what they said. What did they say? They said first, that these buildings have no foundations — there are merely posts in the ground. Counsel for the appellant submitted that the nature of the foundations was a point to be considered in deciding whether a building was of a temporary character or not; if there were deep foundations that would be an indication that the buildings were not temporary and I agree with this view. But in the present case, there were no foundations at all, — just posts in the ground. Then what about the floors of the buildings? They consist only of loose planks except in the case of one building where there is a concrete floor. And what about the walls? They consist of planks nailed to horizontal cross-pieces and in the case of one of the walls, the planking stops half-way up and is continued with wire-mesh. Then, as regards the roofs of these

buildings, they are largely of corrugated iron covered with cloth, though in some instance Chinese tiles which would, of course, be of a more permanent character, have been substituted for corrugated iron. This evidence as to the materials and the method of construction used for these buildings is not challenged at all by the respondent and in my view it is clear from the evidence of these experts that the buildings are of a temporary character. If there were any doubt about it one has only to look at the photographs. They show that these buildings are a lot of shacks and provide abundant confirmation of the evidence given by the architect, Mr. Doffet, that "the whole nature of the construction is of a type not intended to last very long". It may be that the persons who live in these buildings have to make them their home. Many people, unfortunately, have to make their homes in shacks but that does not make them buildings of a permanent character; nor does it affect the question whether they are buildings of a temporary character within the meaning of this provision of the Ordinance. I have no doubt whatever that the buildings on this site which are the subject matter of this action are buildings of a temporary character within the meaning of paragraph (i) of sub-section (1) of section 15.

As regards the other requirement of that paragraph, namely, that the landlord desires possession order to erect permanent buildings in accordance with plans approved by the local authorities, this was not the subject of any argument and I take it is not contested that those conditions are fulfilled. In these circumstances, therefore, I am very clearly of the opinion that the judgment of the learned District Judge was wrong and that the appellants are entitled to judgment in this case. It is not necessary, in view of this finding, to consider the additional ground relied upon by the landlord that in any event these buildings are in such a condition that it is necessary in the interests of public health or town improvement that they should be demolished. I allow this appeal and give judgment for the plaintiffs for possession with costs, such costs to include the costs of the motion which I heard before the commencement of the hearing of this case.

Appeal allowed.

Solicitors: *Sisson & Delay; Donaldson & Burkinshaw.*

E. E. LEIGH v. HEAH JOO SEANG RUBBER ESTATE LTD.

[O. C. J. (Hepworth J.) November 9, 1957]

[J. B. — Civil Suit No. 9 of 1957]

Master and Servant — Commission promised — Basis and rate to be decided by discussion — Death of servant before discussion — Reasonable remuneration.

Companies — Contract — Commission — Promise to pay rubber estate manager on percentage basis — Basis and rate.

The plaintiff in this case was one of the executors of the deceased. The defendants by a letter dated November 24, 1952 offered and the deceased accepted employment with them on the terms and conditions set out in the said letter. A paragraph in the said letter under the heading "Commission" read: "This will be paid on a percentage basis on the net profits of the Company before deduction of depreciation on fixed assets, replanting Expenditure and Income Tax, but excluding income from any investments and monies on deposit. The percentage rate of this commission will be decided by discussion between the General Manager, the Owners and yourself." The deceased commenced employment on December 7, 1952 and continued to be employed by them until he was killed on March 13, 1955 by terrorists. The discussion mentioned under the paragraph "Commission" never took place during the lifetime of the deceased. The issues to be decided were: (a) Was commission payable to the plaintiff? and (b) If so, at what rate?

Held: (1) the plaintiff in this case was entitled to reasonable remuneration, and accordingly the Court would not supply the figure for "the percentage rate of commission" in the paragraph headed "Commission" in the said letter, but would decide what reasonable remuneration the plaintiff was entitled to or indicate the manner in which such reasonable remuneration was to be ascertained;

(2) in this case the reasonable commission to be paid by the defendants to the deceased for the periods in question could be ascertained by taking figures representing 1½% of the net profits of the Company during such periods.

Cases referred to:—

(1) *Taylor v. Brewer* 1 M. & S. 290.
(2) *Roberts v. Smith* 4 H. & N. 315.
(3) *Bryant v. Flight* 5 M. & W. 114.
(4) *Broome v. Speak* (1903) 1 Ch. 586.
(5) *Loftus v. Roberts* 18 T.L.R. 532, 534.
(6) *Powell v. Braun* (1954) 1 All E.R. 484.
(7) *Way v. Latilla* (1937) 3 All E.R. 759.
(8) *Obu v. A. Strauss & Co. Ltd.* (1951) A.C. 243.

CIVIL SUIT.

K. Gould for the plaintiff.

J. E. Lloyd for the defendants.

Hepworth J.: — The plaintiff is one of the executors of the Estate of Kenneth Douglas Paul deceased (referred to hereinafter as "the deceased") having been appointed by the deceased by his Will dated 19th October, 1947, Probate of which was on the 17th August, 1955, resealed at Johore Bahru in Resealing Probate No. 11 of 1955.

The defendants are a limited Company incorporated in the Federation of Malaya, and are the owners of certain rubber estates situated in Pengerang, Johore.

By a letter dated the 24th November, 1952, (referred to hereinafter as "the said letter") the defendants through their then agents, Harper Gilfillan & Company Limited, offered and the deceased accepted employment with the defendants on the terms and